

IN THE DISTRICT COURT OF THE UNITED STATES
 FOR THE DISTRICT OF SOUTH CAROLINA
 CHARLESTON DIVISION

MARY M. JUDGE,)	
)	Civil Action No. 2:05-1799-TLW
Plaintiff,)	
)	<u>ORDER</u>
vs.)	
)	
JOANNE B. BARNHART,)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

This is a social security case. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge, in which the Magistrate Judge suggests that the Commissioner's decision be reversed under sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3). The Report is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(a), D.S.C.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed his Report on January 20, 2006. On February 2, 2006, Defendant filed objections to the report. The Court will discuss Defendant's objections below.

Defendant objects to the recommendation of the Magistrate Judge that this Court find that the Administrative Law Judge (ALJ) erred in rejecting Plaintiff's subjective complaints. Defendant

asserts that the Magistrate Judge inappropriately re-weighed the evidence in the case.

The scope of judicial review in social security disability cases is limited to determining whether the findings of the Commissioner are supported by substantial evidence and whether the correct law was applied. Richardson v. Perales, 402 U.S. 389 (1971); Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990). The Social Security Act requires courts to uphold the Commissioner's decision, even if the court would have reached a different conclusion, as long as it is supported by substantial evidence. See Pyles v. Bowen, 849 F.2d 846, 848 (4th Cir. 1988).

The Magistrate Judge reaches the conclusion that the ALJ's analysis is not sufficient, thereby "precluding any meaningful review by the court." Report 10. The Magistrate Judge does not recommend an award of benefits, but, rather, that the matter be remanded for further proceedings.

This Court concludes that further analysis by the ALJ as set forth in the Report will aid the Court in reaching a conclusion as to whether the ALJ's decision is supported by substantial evidence.

Therefore, after a thorough review of the record, the Report, and Defendant's objections in accordance with the standard set forth above, and in light of the above analysis, the Court adopts the Report and incorporates it herein. Accordingly, it is the judgment of this Court that the Commissioner's decision be reversed under sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3), and the case remanded to the Commissioner for further proceedings consistent with the Report of the Magistrate Judge.

IT IS SO ORDERED.

s/ Terry L. Wooten

TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

August 28, 2006
Florence, South Carolina